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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/715,299

11/17/2003

John W. Steedly

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BOISE, ID 83701

EXAMINER

HANSEN, JAMES ORVILLE

ART UNIT

PAPER NUMBER

3637

MAIL DATE

DELIVERY MODE

08/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/715,299	<b>Applicant(s)</b> STEEDLY, JOHN W.	
	<b>Examiner</b> James O. Hansen	<b>Art Unit</b> 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 June 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Objections***

1. Claim 21 is objected to because of the following informalities: While the position can be taken that the recitation "all of which front, right, rear and left sides" for example, may be definite, the examiner still contends that the language used may be interpreted as being unclear. The examiner suggests replace the term "which" where utilized with either --the-- or --said-- so as to leave no doubt as to the claimed meaning as intended by applicant. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schlosser [U.S. Patent No. 4,498,312] in view of Grogan [U. S. Patent No. 6,325,281]. Schlosser (figures 1-4) teaches of a display case (fig. 1) consisting of a box (10) having front, right, rear and left sides with top edges (see fig. 2), the top edges having internal dimensions (viewed as the internal dimension of each top edge), and the box having a bottom, wherein the front, right, rear and left sides and bottom are composed of polystyrene foam (Styrofoam or similar material), and all of the sides and bottom are permanently attached together such that the top edges form a boundary of a space defined by the internal dimensions as readily apparent to the examiner; and a removable top (11) for the box, the top having an upper section (12) with a top

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covering, the upper section resting on the top edges of the front, right, rear and left sides when attached to the box and capable of forming a display platform, the upper section having a bottom side; wherein the top also includes a lower interior section (13) at the bottom side of the upper section, the lower interior section having external dimensions equal to or slightly less than the internal dimensions of the front, right, rear and left side top edges, so that the lower interior section fits within the space defined by the internal dimensions of the front, right, rear and left side top edges; and wherein the front, right, rear and left side top edges have external dimensions (viewed as the external dimension of each top edge), so that when assembled, all the top edges form a boundary of a perimeter defined by the external dimensions, and the upper section for the top of the box fits flush with these external dimensions, so that the top covering of the upper section enhances the appearance of the display platform.

Schlosser teaches applicant's inventive claimed case as disclosed above, but does not specifically state that the lower interior section is attached to the upper section [in Schlosser's case, the top could be formed as one piece or two dissimilar sized sections mechanically attached together] or state that the upper section comprises a material as prescribed by applicant. Grogan is cited as an evidence reference to show that it was known in the insulated box art to manufacture a removable top (60) having two sections (61, 62) that are secured to each other so as to form a "stepped" cover. As such, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the removable top of Schlosser so as to form the top out of two sections that are secured together as taught by Grogan because this arrangement would form the same "stepped" cover yet provide the means to vary the materials of each section depending upon the needs or

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preferences of the user {assuming the top of Schlosser is formed as a single piece} while reducing the complexity of the manufacturing needed to produce the top. As to the upper section being manufactured from a prescribed material, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to vary the type of material used to produce the upper section of the top depending upon the anticipated use or need of the user since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious personal preference.

4. It is noted that applicant has amended the claim to include the transitional phrase "consisting of" so as to exclude any element not specified in the claim. In formulating the above rejection, the examiner has taken the position that the generic form of the box i.e., the housing and cover satisfy the claimed aspects of applicant's claim [col. 2, lines 60-68]. It is noted that Schlosser does further disclose that the box includes refrigerating elements 14-19 [col. 3, lines 1-21], but these elements are readily removable from the box and are inserted into the box when needed. As such, these elements are not part of the invention when the box is not in use (see col. 3, lines 44-54 for example). The incorporation of additional insulating elements that can be inserted into the box does not obviate the cited reference, for prior art purposes, in as much as applicant's box may be supplied with further insulating elements and articles to be housed.

***Response to Arguments***

5. Applicant's arguments filed June 21, 2007 have been fully considered but they are not persuasive. In response to applicant's request for reconsideration, note the following: the 112(2) rejection has been withdrawn in view of the outstanding objection to the claim. As to the prior art rejection, note the following: the position is taken that Schlosser does indeed teach the "closed language" as recited by applicant. The reference clearly states in col. 3, lines 44-54 that the elements 14-19 [which applicant regards as features in addition to the features defined by the closed language] are placed in a refrigerator or freezer, and when these elements have reached the desired temperature, they are then placed within the device. The position is taken that when these elements are in the refrigerator / freezer {most likely stored there}, the case consists of only applicant's claimed features. Additionally, it is noted that applicant's case may comprise either an article [art object] or other similar cases nested within the case. As such, it is not known how applicant on one hand, can disclose a device that is used with separate components, and then on the other hand exclude these components in an effort to try and restrict what separate components an identically structured case may have associated therewith. Furthermore, Grogan has only been cited to show the known teaching of a removable top for an insulated case having two distinct sections as opposed to Schlosser's sections that are integral.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

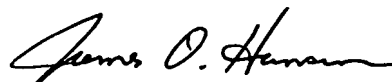
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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James O. Hansen whose telephone number is 571-272-6866. The examiner can be reached on Monday-Friday between 8-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



James O. Hansen  
Primary Examiner  
Art Unit 3637

JOH  
August 14, 2007